Supreme Court, U.S.
FILED

98 707 OCT 29 1998

OFFICE OF THE CLERK

No. 98-——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

CENTRAL OF GEORGIA RAILROAD COMPANY,
Petitioner,

v.

RONALD MOCK,
Respondent.

Petition for a Writ of Certiorari to the Court of Appeals of Georgia

---

PETITION FOR A WRIT OF CERTIORARI

F. KENNEDY HALL
TODD C. BROOKS
HALL, BLOCH, GARLAND & MEYER
1500 Charter Medical Building
P.O. Box 5088
Macon, Georgia 31213
(912) 745-1625

CARTER G. PHILLIPS *
JENNIFER R. MARTIN
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

Counsel for Petitioner

October 29, 1998

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

37 pp

QUESTION PRESENTED

Whether the Georgia Court of Appeals committed reversible error under *Norfolk & Western Ry. Co.* v. *Liepelt,* 444 U.S. 490 (1980), when it upheld the trial court's refusal to use petitioner's clear and unambiguous jury charge to instruct the jury in a Federal Employers Liability Act ("FELA") case that damages awarded for lost wages must be based on net, after tax wages rather than gross wages, and instead expressly instructed the jury not to subtract for income taxes in reaching a verdict.

LIST OF PARTIES AND RULE 29.6 STATEMENT

The only parties to this proceeding are the petitioner Central of Georgia Railroad Company and the respondent Ronald Mock.

Pursuant to Rule 29.6 of the Rules of this Court, petitioner Central of Georgia Railroad Company states that it is a subsidiary of Norfolk Southern Railway Company, which is in turn a subsidiary of Norfolk Southern Corporation.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES AND RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
STATUTES INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION	5
CONCLUSION	14

TABLE OF AUTHORITIES

CASES — Page

Barnes v. *United States*, 685 F.2d 66 (3rd Cir. 1982) 11
Brown v. *Western Ry.*, 338 U.S. 294 (1950) 6
Central of Georgia R.R. Co. v. *Mock*, 499 S.E.2d 673 (Ga. Ct. App. 1998) ..... *passim*
Chesapeake & Ohio Ry. Co. v. *Kelly*, 241 U.S. 486 (1916) 7, 11
Davis v. *Little*, 851 F.2d 605 (2d Cir. 1988) 11, 13
Davis v. *Virginian Ry. Co.*, 361 U.S. 354 (1960) 6
Dixon v. *CSX Transp., Inc.*, 990 F.2d 1440 (4th Cir.), *cert. denied*, 510 U.S. 915 (1993) 11, 13
Fanetti v. *Hellenic Lines, Ltd.*, 678 F.2d 424 (2d Cir. 1982), *cert. denied*, 463 U.S. 1206 (1983) 12
Flannery v. *United States*, 718 F.2d 108 (4th Cir. 1983), *cert. denied*, 467 U.S. 1226 (1984) 12
Gulf Offshore Co. v. *Mobil Oil Corp.*, 453 U.S. 473 (1981) 9
Gulf Offshore Co. v. *Mobil Oil Corp.*, 628 S.W.2d 171 (Tex. Ct. App.), *cert. denied*, 459 U.S. 945 (1982) 13
Harden v. *United States*, 688 F.2d 1025 (11th Cir. 1982) 12
Jones & Loughlin Steel Corp. v. *Pfeifer*, 462 U.S. 523 (1983) 8
Kirchgessner v. *United States*, 958 F.2d 158 (6th Cir. 1992) 11, 12
Klawonn v. *Mitchell*, 475 N.E.2d 857 (Ill. 1985) 13
Michigan Central R.R. Co. v. *Vreeland*, 227 U.S. 59 (1913) 7
Milwaukee and St. Paul Ry. Co. v. *APMS*, 91 U.S. 489 (1875) 7
Monessen Southwestern Ry. Co. v. *Morgan*, 486 U.S. 330 (1987) 7
Norfolk & Western Ry. Co. v. *Liepelt*, 444 U.S. 490 (1980) 3, 5, 6, 7, 8
Oddi v. *Ayco Corp.*, 947 F.2d 257 (7th Cir. 1991) 12
Selby v. *Lovecamp*, 690 F. Supp. 733 (N.D. Ind. 1988) 13

TABLE OF AUTHORITIES—Continued

	Page
Estate of Spinosa v. *Int'l Harvester Co.*, 621 F.2d 1154 (1980)	13
St. Louis Southwestern Ry. Co. v. *Dickerson*, 470 U.S. 409 (1985)	7, 11
Stover v. *Lakeland Square Owners Assoc.*, 434 N.W.2d 866 (Iowa 1989)	13
Ybarra v. *Burlington Northern, Inc.*, 689 F.2d 147 (8th Cir. 1982)	12, 13
STATUTES	
Federal Employers Liability Act, 45 U.S.C. § 51 *et seq.*	2, 3
45 U.S.C. § 52	2
OTHER AUTHORITIES	
Lawrence Frolik, *The Convergence of I.R.C. S. 104(A)(2), Norfolk & Western Ry. Co. v. Liepelt and Structured Tort Settlements: Tax Policy "Derailed"*, 51 Fordham L. Rev. 565, 589 (1983)	13
Todd C. McKee, *Klawonn v. Mitchell: Does a Refusal to Instruct a Jury That Wrongful Death Damages are Excluded from Income Taxation Make the Jury's Task Simpler or More Difficult?*, 19 Am. J. Trial Advoc. 211, 215-16 (1995)	12
Laura Sager and Stephen Cohen, *Discrimination Against Damages For Unlawful Discrimination: The Supreme Court, Congress, and The Income Tax*, 35 Harv. J. on Legis. 447, 503 (1998)	13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

No. 98-____

CENTRAL OF GEORGIA RAILROAD COMPANY,
Petitioner,

v.

RONALD MOCK,
Respondent.

Petition for a Writ of Certiorari to the Court of Appeals of Georgia

---

PETITION FOR A WRIT OF CERTIORARI

Petitioner Central of Georgia Railroad Company respectfully requests that a writ of certiorari issue to review the judgment and decision of the Court of Appeals of Georgia.

OPINIONS BELOW

The opinion of the Court of Appeals of Georgia (App. at 1a-12a) is reported at 499 S.E.2d 673. The order of the Court of Appeals of Georgia (App. at 13a) denying petitioner's motion for reconsideration is not reported. The order of the Supreme Court of the State of Georgia (App. at 14a) denying petitioner's petition for certiorari is not reported. The order of the Supreme Court of the State of Georgia (App. at 15a) denying petitioner's motion for reconsideration of petition for certiorari is not reported. The judgment of the State Court, Bibb County, Georgia against petitioner entered upon a jury's verdict (App. at 16a) is not reported.

JURISDICTION

The decision of the Court of Appeals of Georgia was filed on March 10, 1998 (App. at 1a), and the Court of Appeals' order denying petitioner's motion for reconsideration was filed March 25, 1998 (App. at 13a). The Supreme Court of the State of Georgia entered its order denying petitioner's petition for certiorari on July 2, 1998 (App. at 14a), and entered its order denying petitioner's motion for reconsideration on the petition for certiorari on July 31, 1998 (App. at 15a). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

STATUTES INVOLVED

Section 1 of the Federal Employers Liability Act ("FELA"), 45 U.S.C. § 51 *et seq.*, provides in pertinent part:

> Every common carrier by railroad while engaging in commerce between any of the several States . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce . . . resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

45 U.S.C. § 51; see also 45 U.S.C. § 52.

STATEMENT OF THE CASE

1. Respondent Ronald Mock was employed as a railroad conductor for petitioner Central of Georgia Railroad Company on September 27, 1991. On that date, respondent attempted to remove an end-of-train device ("EOT device") from the coupler on the rear of a train. An EOT device is a portable device that permits the train engineer remotely to monitor air pressure. The device is installed on the rear of the train and is coupled directly

to the air brake system. The EOT device weighs approximately 30-35 pounds. Ordinarily, it can readily be removed from the train by one person who lifts it up and lowers it with both hands to waist level for carrying. See *Central of Georgia R.R. Co.* v. *Mock,* 499 S.E.2d 673, 675 (Ga. Ct. App. 1998).

When respondent removed the EOT device, he let go of one end with his right hand so that he could grab the attached air hose. As respondent attempted this balancing maneuver, he lost his footing, which caused the free end of the EOT device to swing down and hit his arm. As a result, he injured his shoulder. *Id.*

2. Respondent filed suit in the State Court of Bibb County, Georgia under the Federal Employers Liability Act ("FELA"), 45 U.S.C. § 51 *et seq.*, alleging that his shoulder injury resulted from petitioner's negligence. The FELA creates a cause of action for injuries suffered by a railroad employee caused by a railroad's negligence. Relevant to this petition, a plaintiff under the FELA may recover damages for past and future wage loss, on an after-tax basis, upon proving with reasonable certainty the quantum of such damages. *Norfolk & Western Ry. Co.* v. *Liepelt,* 444 U.S. 490, 494 (1980). An award of damages under the FELA is intended solely to compensate an injured plaintiff; therefore, punitive damages are not authorized under the Act.

In the damages phase of the trial, respondent presented his own evidence of "lost wages, impairment of his future earning capacity, his permanent physical impairment, and his pain and suffering." *Central of Georgia,* 499 S.E.2d at 677. With respect to his claim for future lost wages, respondent presented evidence from which both gross wage loss and net wage loss could be determined, including his 1994 and 1995 W-2s and tax returns. (Trial Transcript ("Tr.") at 248). In addition, an economist testified as to respondent's lost future income based on a 24 percent

physical impairment, and further testified that as a result of his current impairment respondent loses approximately $650 in wages per month because he needs to rest his shoulder. (Tr. at 257 & 271.) Respondent testified that he currently is employed as an engineer with petitioner, and in that capacity he is earning nearly two times the amount of money he earned prior to his injury. (Tr. at 247-53.) Respondent's current supervisor testified that respondent works 28 out of 30 days each month as an engineer. (Tr. at 329.) In closing arguments, counsel for respondent claimed lost wages to date of $104,000 gross or $83,000 net. (Tr. at 363.)

During trial, petitioner requested the following jury instruction regarding the proper calculation of lost earnings:

> [I]f you render a money award in this case . . . you should take into consideration the fact that any award rendered by you would not be subject in the hands of plaintiff to income taxes. Thus, any verdict in favor of the plaintiff for loss of earnings should be calculated on the basis of his net earnings, that is, the earnings left to him after the payment of income taxes.

The trial court refused to give petitioner's instruction, and instead submitted respondent's charge, which instructed the jury that:

> [A]ny amounts that you allow for damages shall not be subject, incidentally, to income tax; therefore, you should neither add *nor subtract* for income tax when arriving at your verdict.

Central of Georgia, 499 S.E.2d at 678 (emphasis added). Thus, the jury was never instructed to award *net,* rather than *gross,* lost wages, and in fact, was explicitly instructed *not* to subtract income taxes from lost wages.

On April 2, 1992, the jury returned a verdict and awarded respondent $755,000. (App. at 16a.) Judgment was entered against petitioner on the same day. On July 30, 1997, the trial court denied petitioner's post-trial motions.

3. On March 10, 1998, the Georgia Court of Appeals affirmed the jury's verdict and award. In upholding the award, the Court of Appeals stated, "[*Norfolk & Western Ry. Co.* v. *Liepelt*, 444 U.S. 490 (1980),] does not *require* that income taxes be subtracted in arriving at an award." *Central of Georgia*, 499 S.E.2d at 678. The court reasoned that, informing the jury that the award would not be subject to income taxation, "negates the necessity of subtracting income taxes from any award of past or future lost wages." *Id.*

On March 25, 1998, the Court of Appeals denied petitioner's Motion for Reconsideration. (App. at 13a.) The Supreme Court of the State of Georgia denied review on July 2, 1998 (App. at 14a), and denied petitioner's motion for reconsideration on July 31, 1998, with two Justices dissenting (App. at 15a).

REASONS FOR GRANTING THE PETITION

The Court of Appeals' decision in this case—upholding the trial court's refusal to instruct the jury in a FELA action that damages awarded for lost wages must be based solely on net, after tax wages rather than gross wages—directly conflicts with settled federal law as established by this Court in *Norfolk & Western Ry. Co.* v. *Liepelt*, 444 U.S. 490 (1980). Specifically, the issue in this Court is whether the Georgia state court erred when it refused to submit petitioner's requested instruction on damages, which, consistent with *Liepelt*, clearly would have conveyed the following important information to the jury:

> [I]f you render a money award in this case . . . you should take into consideration the fact that any award

> rendered by you would not be subject in the hands of plaintiff to income taxes. Thus, any verdict in favor of the plaintiff for loss of earnings should be calculated on the basis of his net earnings, that is, the earnings left to him after the payment of income taxes.

Instead, the trial court charged the jury with the following confusing and contradictory instruction: "Any amounts you allow for damages shall not be subject [] to income tax, therefore, you should neither add *nor subtract* for income tax when arriving at your verdict." *Central of Georgia*, 499 S.E.2d at 678 (emphasis added). Significantly, petitioner's proposal clearly would have instructed the jury that, in calculating damages for lost earnings, it *must* subtract taxes from gross earnings; in direct contrast, the trial court's instruction explicitly dictated to the jury that it must not subtract taxes in arriving at an award. The state court's instruction is flatly inconsistent with this Court's mandate in *Liepelt* and must be presumed to have had a concrete impact on the jury's ability correctly to assess and award damages under the FELA in this case. Because the law is clear and the error is obvious, this case is particularly suited for summary reversal by this Court, which would be wholly consistent with this Court's treatment of similar FELA cases in the past.

1. This case presents an important federal question, which was unequivocally answered by this Court nearly 20 years ago. As a general matter, the Court repeatedly has recognized that in enacting FELA one of Congress's primary goals was to create a uniform, national system for allocating fairly financial responsibility for injuries suffered by railroad employees as a consequence of the railroad's negligence. See, e.g., *Liepelt*, 444 U.S. at 493 n.5; *Davis* v. *Virginian Ry. Co.*, 361 U.S. 354, 355 (1960); *Brown* v. *Western Ry.*, 338 U.S. 294, 295-96 (1950). As a result, "[i]t has long been settled that questions concerning the measure of damages in an FELA action are federal

in character." *Liepelt*, 444 U.S. at 493; *Monessen Southwestern Ry. Co.* v. *Morgan*, 486 U.S. 330, 335 (1987); *Chesapeake & Ohio Ry. Co.* v. *Kelly*, 241 U.S. 486, 491 (1916); *Michigan Central R.R. Co.* v. *Vreeland*, 227 U.S. 59, 66 (1913). Consequently, the propriety of jury instructions relating to the measure of damages is a federal question. *Monessen Southwestern Ry. Co.*, 486 U.S. at 340; *St. Louis Southwestern Ry. Co.* v. *Dickerson*, 470 U.S. 409, 411 (1985) (citing *Liepelt*, 444 U.S. at 493).

Not only does this case present a question long recognized as distinctly federal in character, but also it presents the *precise* question this Court already deemed important enough to decide in *Liepelt*. 444 U.S. 490. In *Liepelt*, the Court resolved the identical federal question presented in this case, when it granted certiorari to resolve two important issues: (1) whether the proper measure of damages for lost wages under the FELA should be net of taxes, *i.e.*, whether a jury should subtract taxes on earnings from gross wages to calculate actual employee losses; and (2) whether the defendant in a FELA action is entitled to submit to the jury a damages instruction that clearly delineates how a damage award is treated under the tax code. The Court answered both of these questions in the affirmative.

First, the Court considered how the jury should treat *taxes on earnings* in order to calculate an appropriate damage award to compensate a FELA plaintiff for *actual* losses. Recognizing the fundamental precept that compensatory damages are intended to place a plaintiff in the same position he or she would have occupied absent any injury, see *Milwaukee and St. Paul Ry. Co.* v. *APMS*, 91 U.S. 489, 492 (1875), the Court held:

> The amount of money that a wage earner is able to contribute to the support of his family is unquestionably affected by the amount of the tax he must pay to the Federal Government. It is his after-tax in-

> come, rather than his gross income before taxes, that provides the only realistic measure of his ability to support his family. *It follows inexorably that the wage earner's income tax is a relevant factor in calculating the monetary loss suffered by his dependents when he dies.*

Liepelt, 444 U.S. at 493-94 (emphasis added); see also *Jones & Loughlin Steel Corp.* v. *Pfeifer*, 462 U.S. 523, 534 (1983) ("[T]he injured worker's lost wages would have been diminished by state and federal income taxes. Since the damages award is tax-free, the relevant stream is ideally of *after-tax* wages and benefits.") (citations omitted). Thus, the Court concluded that after-tax earnings, rather than gross earnings, correspond to *actual* losses, and therefore, in order to calculate an appropriate compensatory award under the FELA, a jury must be provided with evidence relevant to the plaintiff's after-tax earnings. *Liepelt*, 444 U.S. at 494-95. Accordingly, this Court reversed the rulings below for refusing to admit such evidence.

Second, the Court considered how the jury should treat *taxes on damages*—a wholly different tax consideration than the one relevant to the first holding—in order to calculate an appropriate damage award. In this regard, the Court held that it was reversible error to refuse to use a brief and "easily understood" instruction to inform the jury that damage awards are not taxed, and therefore, the jury should not inflate actual losses based on the mistaken belief that the award is taxable. *Id.* at 496-98.

Thus, *Liepelt* contemplates two distinct steps in calculating damages. First, the jury calculates *actual* lost wages on an after-tax basis, *i.e.*, tax on earnings must be subtracted from gross earnings, to "make the plaintiff whole." Second, having calculated actual losses, the jury should not inflate the actual loss award based on an erroneous assumption that the award will be taxed. To ensure that a jury understands the proper measure of damages and is

able to make an informed calculation of damages, the Court held that it is reversible error for the trial court to refuse to permit evidence to be introduced that would permit an after-tax earnings calculation to be made. See *id.* at 496 n.10 ("subtractions [for taxes that the plaintiff would have paid] are required in order to determine 'the pecuniary benefits which the beneficiaries might have reasonably received' ") (citation omitted). Similarly, the Court held that it is error to refuse to use a concise, "easily understood" instruction to explain to the jury how it should treat the tax issues in calculating an award. See *id.* at 498 (requiring the use of a defendant's instruction if it "eliminate[s] an area of doubt or speculation that might have an improper impact on the computation of the amount of damages"). Thus, the primary understanding of *Liepelt*, read as a whole, was "to eliminate from the deliberations of juries 'an area of doubt or speculation that might have an improper impact on the computation of the amount of damages.' " *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473, 486-87 (1981) (quoting *Liepelt*, 444 U.S. at 498).

The Georgia Court of Appeals, however, completely misunderstood and confused *Liepelt's* two holdings. In affirming the lower court's refusal to use petitioner's jury instruction on the tax issues, the appeals court stated:

> *Liepelt does not require that income taxes be subtracted in arriving at an award. . . . Liepelt* holds that it is error to refuse a requested instruction that the jury's award of damages would not be subject to income taxation. *Giving this charge negates the necessity of subtracting income taxes from any award of past or future lost wages since the jury is instructed that its award will not be taxed.*

Central of Georgia, 499 S.E.2d at 678 (emphasis added) (citations omitted). The Court of Appeals' first unambiguous statement, that *Liepelt* does not require the jury to subtract taxes in arriving at an award, flatly ignores

the first holding in *Liepelt*, which dictates that income taxes must be subtracted from gross wages to derive actual lost wages. Moreover, the appeals court repeats its prohibition against subtracting taxes by explaining that an instruction to the jury that the award is not subject to taxation "negates the necessity of subtracting income taxes from any award of past or future lost wages." In other words, according to the Georgia Court of Appeals' confusing analysis, the *Liepelt* jury instruction—that damage awards are not subject to taxation—is made *in lieu of* subtracting taxes from lost wages. Not only does the Court of Appeals completely confuse and contradict *Liepelt's* two distinct holdings on how correctly to calculate damages in light of the tax code, it does violence to this Court's underlying holding that a jury is entitled to clear, unambiguous instructions so that it can make an informed calculation of those damages.

By affirming the trial court's jury instruction, the Court of Appeals obviously concluded that the instruction was consistent with its understanding of *Liepelt* as prohibiting the subtraction of income taxes from past or future lost wages. See *Central of Georgia*, 499 S.E.2d at 678 ("According to Central, [*Liepelt*] requires that income taxes be subtracted in arriving at the award, whereas the trial court's charge prohibits subtraction. We disagree with Central's interpretation of *Liepelt*."). Indeed, the plain language of the jury instruction required the court to so hold in order to affirm the award in this case: " '[Y]ou should neither add *nor subtract* for income tax when arriving at your verdict.' " *Id.* Based on the unambiguous language of the charge, the jury must have believed that it was forbidden from subtracting taxes from gross wages. Consistent with the first holding in *Liepelt*, the jury was presented with evidence about respondent's after-tax earnings. However, it was not given proper instructions on how to use that evidence in arriving at an award. Indeed, the trial court effectively instructed the jury to

ignore that evidence by expressly ordering the jury not to subtract taxes in calculating an award. Thus, the jury instruction on its face produced precisely the result prohibited by *Liepelt*.

In sum, the Court of Appeals' decision to affirm the trial court's refusal to use petitioner's jury charge resulted in a jury charge that (i) instructed the jury to calculate damages in precisely the opposite way than the method mandated by the first holding in *Liepelt*; and (ii) lacked the clarity mandated by the second holding in *Liepelt*. Thus, the state court below has decided an important question of federal law in a way that directly conflicts with this Court's decision in *Liepelt* and undermines the national uniformity requirement of the FELA. Accordingly, this case presents compelling reasons for this Court summarily to reverse the judgment below. See *Dickerson*, 470 U.S. at 412 (summarily reversing state court of appeals for upholding trial court's refusal to instruct jury in a FELA case that its award should reflect the present value of future losses, contrary to this Court's decision in *Chesapeake & Ohio Ry. Co.* v. *Kelly*, 241 U.S. 486 (1916)).

2. The decision by the Georgia state court also conflicts with the law in a majority of federal circuits. Most of the federal circuit courts that have considered the issue have expressly recognized that *Liepelt* requires juries to *subtract* income taxes from lost wages in calculating an award under FELA. See, e.g., *Davis* v. *Little*, 851 F.2d 605, 611 (2d Cir. 1988) ("jury must be instructed to deduct future income taxes from its determination of the amount of future lost wages"); *Dixon* v. *CSX Transp., Inc.*, 990 F.2d 1440, 1444 (4th Cir.), *cert. denied*, 510 U.S. 915 (1993) (upholding jury instruction that jury should reduce damages for lost wages to reflect anticipated income taxes); *Barnes* v. *United States*, 685 F.2d 66, 69 (3rd Cir. 1982) ("award for lost earnings must be reduced by income taxes in FELA action"); *Kirchgessner* v. *United States*, 958 F.2d 158, 161 (6th Cir.

1992) ("income tax deductions" proper in awards under the FELA); *Oddi* v. *Ayco Corp.*, 947 F.2d 257, 267 (7th Cir. 1991) ("the Supreme Court has approved the practice of reducing the award by the amount the party would have paid in income taxes on the relevant earnings"); *Harden* v. *United States*, 688 F.2d 1025 (11th Cir. 1982) (*Liepelt* requires deduction of taxes). Indeed, many federal circuit courts have extended the *Liepelt* rule to non-FELA cases. See, e.g., *Kirchgessner*, 958 F.2d at 160 (finding error for failure to deduct for income taxes in wrongful death action under Federal Tort Claims Act); *Flannery* v. *United States*, 718 F.2d 108, 111 (4th Cir. 1983), *cert. denied*, 467 U.S. 1226 (1984) (extending *Liepelt* to Federal Tort Claims Act suit); *Harden*, 688 F.2d at 1029 (same); *Fanetti* v. *Hellenic Lines, Ltd.*, 678 F.2d 424, 431 (2d Cir. 1982), *cert. denied*, 463 U.S. 1206 (1983) (extending *Liepelt* to Longshoremen's and Harbor Worker's Compensation Act). In short, the federal courts generally have had no problem understanding that *Liepelt* requires the jury to deduct income taxes from gross wages to determine actual losses. But see *Ybarra* v. *Burlington N., Inc.*, 689 F.2d 147, 153-54 (8th Cir. 1982) (upholding jury charge instructing jury that it "should not increase *or decrease* the amount of the award because of federal taxes").

The decision of the Georgia Court of Appeals reflects a broader state court antipathy to the rule in *Liepelt*. State courts traditionally have been reluctant to instruct juries about the tax-free nature of damage awards fearing that income taxes are too speculative or complex for a jury calculation and that such a charge would open a "Pandora's Box" of collateral considerations. See Todd C. McKee, *Klawonn v. Mitchell: Does a Refusal to Instruct a Jury That Wrongful Death Damages are Excluded from Income Taxation Make the Jury's Task Simpler or More Difficult?*, 19 Am. J. Trial Advoc. 211, 215-16 (1995); Lawrence Frolik, *The Convergence of*

I.R.C. S. 104(A)(2), Norfolk & Western Ry. Co. v. Liepelt and Structured Tort Settlements: Tax Policy "Derailed", 51 Fordham L. Rev. 565, 589 (1983).[1] To be sure, state courts are free in cases arising under state law to apply this preference. What a state court cannot do, however, is what the Georgia Court of Appeals did here—refuse to follow *Liepelt even in a FELA action.*

The tax consequences in a FELA action now depend on geography. In Georgia state court and the Eighth Circuit, juries are explicitly instructed *not* to subtract taxes in calculating lost wages. *Central of Georgia,* 499 S.E.2d at 678; *Ybarra,* 689 F.2d at 153-54. Thus, in those jurisdictions plaintiffs essentially obtain a windfall by obtaining taxes that, absent any injury, would have been paid to the government. Other courts, including the Eleventh Circuit which includes Georgia, recognize—consistent with *Liepelt*—that it is reversible error to refuse a defendant's clear instruction that lost wages must be calculated on an after-tax basis. See, e.g., *Davis,* 851 F.2d at 611; *Dixon,* 990 F.2d at 1444-45. In those circuits, consistent with this Court's ruling, plaintiffs in a FELA action are entitled only to an amount of compensation that would put them in precisely the same position they would have been absent the injury. Neither plaintiffs *nor* defendants must pay taxes on that amount. Thus, the size of a damage award in a case brought in Georgia depends on whether the suit is filed in state court or across the street in federal court. Accordingly, the Court should

---

[1] *See also* Laura Sager and Stephen Cohen, *Discrimination Against Damages For Unlawful Discrimination: The Supreme Court, Congress, and The Income Tax*, 35 Harv. J. on Legis. 447, 503 (1998); *see also, e.g., Klawonn* v. *Mitchell,* 475 N.E.2d 857 (Ill. 1985); *Stover* v. *Lakeland Square Owners Assoc.,* 434 N.W.2d 866 (Iowa 1989); *Gulf Offshore Co.* v. *Mobil Oil Corp.,* 628 S.W.2d 171 (Tex. Ct. App.), *cert. denied,* 459 U.S. 945 (1982); *Estate of Spinosa* v. *International Harvester Co.,* 621 F.2d 1154, 1158 (1980) (following traditional rule in diversity suit); *Selby* v. *Lovecamp,* 690 F. Supp. 733, 736 (N.D. Ind. 1988) (same).

reverse in order to ensure national uniform treatment of the federal tax code under the FELA.

The decision by the Georgia Court of Appeals in this case undermines the principles of federal supremacy and national uniformity under the FELA. Nearly 20 years ago, this Court instructed courts, in a clear and unqualified decision, that it constitutes reversible error (1) to refuse to use a defendant's "easily understood" and "brief" jury charge to instruct a jury as to how correctly to calculate a damages award under the FELA in light of certain tax considerations, and (2) not to base a FELA award on net income. The decision in the court below flatly contradicts this established federal law and is inconsistent with the clear majority of federal courts of appeals, which have correctly applied this Court's binding precedent. Accordingly, the decision below should be summarily reversed on the basis of this Court's holding in *Liepelt*, or at a minimum, the Court should grant the petition and resolve the decisional conflict among the lower courts on the merits.

CONCLUSION

The petition for a writ of certiorari should be granted. The Court may wish to reverse summarily on the basis of *Liepelt*.

Respectfully submitted,

F. KENNEDY HALL
TODD C. BROOKS
HALL, BLOCH, GARLAND & MEYER
1500 Charter Medical Building
P.O. Box 5088
Macon, Georgia 31213
(912) 745-1625

CARTER G. PHILLIPS *
JENNIFER R. MARTIN
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

Counsel for Petitioner

October 29, 1998

* Counsel of Record

APPENDICES

APPENDICES

APPENDIX A

COURT OF APPEALS OF GEORGIA

No. A98A0250

CENTRAL OF GEORGIA RAILROAD COMPANY

v.

MOCK

March 10, 1998

Reconsideration Denied March 25, 1998

JOHNSON, Judge.

Ronald Mock was employed by Central of Georgia Railroad Company ("Central") as a railroad conductor. He sued Central pursuant to the Federal Employers' Liability Act ("FELA") for injuries received while employed by Central. A jury returned a verdict in favor of Mock, and Central appeals. For reasons which follow, we affirm.

The record shows that on September 27, 1991, Mock attempted to remove the end-of-train ("EOT") device while the train was stopped in a joint yard of CSX Transportation and Central. An EOT consists of a body, an 18- to 24-inch stem, an air hose, and an air hose coupling device called a "gladhand." It weighs approximately 35 pounds. According to Mock, the EOT was "stuck" in the car, but he jarred it loose. Mock removed the EOT, raised it to a certain height above his head, then let the EOT

go with his right hand, balancing one end with his left hand, while grabbing the air hose with his right hand. Two other conductors verified that an individual must balance the EOT with one hand while reaching for the air hose with the other hand. Footing is important because the conductor must pivot and turn to the side in performing this task.

Mock testified that the ground was muddy in the track area where he had to work. It had rained nearly three inches at the site two days before Mock was injured, and the track area was "like a mud pond." It usually stayed muddy and "very slick" for three or four days after a rain and had been that way since Mock began work for Central in 1977. Weeds and vegetation in an adjacent ditch next to the railroad tracks partially plugged the culvert. The two railroads that jointly used the yard argued about which should maintain it and how much should be spent on maintenance, so "very little got done." Requests by train employees for drainage rocks went unheeded.

As Mock attempted the balancing maneuver, he lost his footing. He held onto the EOT in an effort to keep from damaging the device, and in so doing, he injured his left shoulder. The railroad brakeman helped Mock put his shoulder back into its socket, and Mock finished the trip. Mock reported his injury to the radio dispatcher and, when he arrived at his destination, informed his supervisor that he had hurt his shoulder. He also spoke to a claims agent the day he left the hospital, while on medication, and informed the agent he was having problems remembering what happened. Mock first mentioned the mud and his loss of footing during a pre-trial deposition.

1. In its first enumeration of error, Central asserts the trial court erred in refusing to grant its motion for directed verdict on Mock's claim for recovery under the drainage regulation. The regulation at issue provides: "Each drain-

age or other water carrying facility under or immediately adjacent to the roadbed must be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned." 49 CFR § 213.33. Central contends Mock failed to prove the ditch would not accommodate expected water flow, that the ditch was immediately adjacent to the roadbed, or that the ditch was the cause of the mud on which he slipped. Without citing any relevant authority to support its argument, Central maintains that expert testimony is required to establish when a drainage and/or other water-carrying facility is sufficiently "maintained and kept free of obstruction, to accommodate expected water flow for the area concerned." We disagree.

"In a FELA case, a directed verdict is possible only when there is a *complete absence* of probative facts supporting the nonmovant's position." (Citation and punctuation omitted; emphasis in original.) *Bagley v. CSX Transp.*, 219 Ga.App. 544, 546(1), 465 S.E.2d 706 (1995). Thus, the question before us is whether there was a complete absence of probative facts supporting Mock's claim against Central under the drainage regulation.

Mock testified that the culvert was partially obstructed at the time of his injury in the same fashion as shown in his exhibits. The railroad individual who was responsible for maintaining the area under the bridge admitted that weeds covered up the ditch immediately adjacent to the track "[a] little bit." According to witnesses, the ditch was "just off the outside" of the track, had always been muddy and slick when it rained, and never drained properly. In addition, Mock presented testimony that there was no ballast between the rails and that Central refused to provide gravel which was requested by the employees in an attempt to rectify the drainage problem. This testimony provides probative facts supporting Mock's position, and the trial court did not err in refusing to grant

Central's motion for directed verdict on this ground. This is not a design defect case, and the fact that Central provided testimony from an expert witness and Mock did not merely goes to the weight of the evidence and is a consideration for the jury, not the appellate court.

2. Central maintains the trial court erred in giving Mock's requested charge concerning the applicability of the federal Safety Appliance Act ("SAA"). 49 USCS § 20301 et seq. If a violation of the SAA results in injury to a railroad employee, the negligence of the employee is not relevant and does not reduce his recovery unless his negligence can be said to be the sole cause of his injury. See 45 USCS § 53. According to Central, the SAA was not applicable in this case because there were no allegations that any of the appliances covered by the SAA caused Mock's injury. According to Mock, the drainage regulation (49 CFR § 213.33) is an SAA standard. While Central admits that the violation of certain railroad safety regulations has been given the same effect as a violation of the SAA, namely the annulling of the employee's negligence unless it is the sole cause of the injury, Central argues that a violation of the drainage regulation does not have that result because this regulation was not enacted for the safety of railroad employees and therefore is not comparable. We disagree.

Under 45 USCS § 431, the Secretary of Transportation has the authority to issue appropriate regulations relating to "all areas of railroad safety[,] supplementing provisions of law and regulations in effect on [October 16, 1970]." The drainage regulation was promulgated by the Secretary of Transportation pursuant to this authority and is part of a group of regulations referred to as "Track Safety Standards." See 49 CFR § 213. It is well established that in certain circumstances, regulations enacted by the Secretary of Transportation have the same force and effect as the SAA, i.e., nullifying an employee's contributory negligence. 45 USCS § 437(c). See *Kernan v. American*

Dredging Co., 355 U.S. 426, 78 S.Ct. 394, 2 L.Ed.2d 382 (1958); *Eckert v. Aliquippa & Southern R. Co.*, 828 F.2d 183 (3rd Cir.1987). In fact, at least one court has held that "a trial court commits reversible error by failing to submit an SAA claim to the jury when a provision of the Act has been violated through a violation of a regulation promulgated thereunder. [Cit.]" *Id.* at 185.

Congressional intent to afford injured railroad employees a remedy against their railroad employers is strong. Thus, we agree that a violation of a regulation promulgated under the SAA constitutes a violation of the SAA. See *Eckert*, supra; *Beissel v. Pittsburgh & Lake Erie R. Co.*, 801 F.2d 143 (3rd Cir.1986), cert. denied, 479 U.S. 1088, 107 S.Ct. 1296, 94 L.Ed.2d 152 (1987). See also *Orchelle v. CSX Transp.*, 574 So.2d 749, 753(2) (Ala.1990) (evidence of a violation of 49 CFR § 232.17 (b)(1), regarding the maintenance of brake equipment on cars, was sufficient to warrant a jury charge on the SAA). "[T]he violation of the regulations constitute[s] a violation of the statutory duty as defined by the Secretary of Transportation pursuant to his rulemaking authority under the SAA. [Cit.]" *Eckert*, supra at n. 4. Since the Track Safety Standards are designed at least in part to protect employees, they are covered by the SAA. Contrary to Central's argument, the SAA does *not* merely cover appliances.

Moreover, although there are apparently no cases on point, it is evident from the standpoint of both legislative intent and prior judicial interpretation that the drainage regulation was enacted to both promote track stability *and* provide a safe working environment for railroad employees. See, e.g., *Black v. Baltimore & O. R. Co.*, 398 N.E.2d 1361 (Ind.App.1980) (complaint seeking Public Service Commission to order railroad to institute program to correct hazard created by muddy condition in which trainmen were required to work was preempted by virtue of provisions of the Federal Railroad Safety Act and cor-

responding federal regulations). Accordingly, the trial court did not err in charging the jury on the SAA.

3. Central next asserts the trial court erred in refusing to give its requested charges concerning Mock's duty to exercise ordinary care, when Central asserted a contributory negligence defense. "[S]imply because a request to charge is apt, correct and pertinent, it is not necessarily error to fail to charge it. The test is whether the court substantially covered the principles embodied therein or whether it was sufficiently or substantially covered by the general charge." (Citation and punctuation omitted.) *Monroe v. Southern R. Co.*, 210 Ga.App. 597, 598(2), 436 S.E.2d 568 (1993). In its charge, the trial court discussed negligence, foreseeability, causation, contributory negligence, the effect of contributory negligence on the recovery, the fact that Mock had to prove negligence before Central was required to prove contributory negligence, and the fact that there must be a causal relationship between Mock's negligence and his injury. The trial court's charge sufficiently and substantially covered the principles of contributory negligence. Thus, the trial court did not err in refusing to give Central's requested charges based on the defense of contributory negligence.

4. Central contends the trial court erred in refusing to give the following charge: "You are instructed that if the plaintiff had a choice of ways of doing a particular job in the course of his employment, one way involving danger and risk of injury to himself and another way that is safe or less dangerous, and he voluntarily chooses the unsafe or more dangerous way, then the employee may be deemed negligent, if the risk of injury was obvious and such as a man of ordinary prudence would have avoided." We find no error in the trial court's refusal to give this charge.

Mock testified that the EOT was "stuck" in the car, but he jarred it loose. He then removed the EOT, raised it to a certain height above his head, and let the EOT go

with his right hand, balancing one end with his left hand, while grabbing the air hose with his right hand. Two other conductors verified that an individual must balance the EOT with one hand while reaching for the air hose with the other hand. According to one conductor, "you've got to grab that hose because it'll be dangling like that, and once it hits you on the knee, you'll—you'll grab it from then on, because it hurts." While Central presented evidence of an alternative way to remove the EOT, there was no evidence that Mock knew of the alternative method.

5. The trial court did not err in refusing to give Central's requested charge that "damages in an FELA case should not be a windfall to a plaintiff or punishment to a railroad." While Central correctly notes that punitive damages are not authorized in an FELA action, such a charge was not mandated in the present case. There was no evidence presented that Mock or his attorneys desired to punish Central or to obtain a windfall. Mock merely presented evidence of his lost wages, impairment of his future earning capacity, his permanent physical impairment, and his pain and suffering.

6. The trial court did not err in refusing to give Central's requested charge that speculative damages and damages based on "future possibilities" were not recoverable. The jury charge given by the trial court substantially and sufficiently covered this principle. During the portion of the charge relating to damages, the court repeatedly informed the jury that it could award damages only for past and future lost wages and benefits and for past and future pain and suffering which Mock was "reasonably certain" to suffer in the future, to lose, to have earned, and so forth. We find no error.

7. Central contends the trial court erred in failing to charge the jury that "[t]he same causation standard—whether the act contributed in any way to the injury—applies both to defendant's negligence and plaintiff's con-

tributory negligence." Once again, this charge was substantially and sufficiently covered in the jury charge given by the trial court. As discussed in Division 3, the trial court exhaustively covered the principles of negligence, burdens of proof, causation, and contributory negligence. The trial court charged the jury that "[n]egligence simply means the absence of or failure to exercise the degree of care required by law to be exercised." The trial court further charged the jury that "if the plaintiff himself was legally partially responsible for the incident which caused his injury, then you would diminish the amount of damages that you otherwise would have awarded in proportion to the amount of negligence that you attribute to the plaintiff, if you find him negligent, whatever you may find that to be from the evidence itself."

Hickox v. Seaboard System R., 183 Ga.App. 330, 358 S.E.2d 889 (1987), does not stand for the proposition that the requested jury charge *must* be given. Rather, *Hickox* merely holds that the FELA cases which allow plaintiffs to reach the jury on a slim showing of negligence also permit defendants to reach the jury on the issue of the plaintiff's negligence with an equally slim showing. In the present case, the issue of Mock's contributory negligence was permitted to go to the jury, and the trial court charged the jury on this issue. This enumeration lacks merit.

8. Central argues the trial court erred in refusing to give Central's request to charge and in giving Mock's request to charge regarding the effect of income taxes on any award to Mock. The jury was instructed regarding reducing any damage award for future lost earnings to their present value and charged that "any amounts that you allow for damages shall not be subject, incidentally, to income tax; therefore, you should neither add nor subtract for income tax when arriving at your verdict." Central objects to the second portion of this charge, contending it was incorrect and prejudicial. According to Cen-

tral, *Norfolk & Western Ry. Co. v. Liepelt*, 444 U.S. 490, 100 S.Ct. 755, 62 L.Ed.2d 689 (1980), requires that income taxes be subtracted in arriving at the award, whereas the trial court's charge prohibits subtraction. We disagree with Central's interpretation of *Liepelt*.

Liepelt does not *require* that income taxes be subtracted in arriving at an award. *Liepelt* acknowledges that a plaintiff's after-tax income, rather than his gross income before taxes, provides the only realistic measure of his ability to support his family. *Id.* at 493. Without a charge informing the jury that its award will not be subject to income taxes, it is entirely possible that a jury would inflate the award and overcompensate the plaintiff on the basis of the erroneous assumption that the judgment will be taxable. Thus, *Liepelt* holds that it is error to refuse a requested instruction that the jury's award of damages would not be subject to income taxation. Giving this charge negates the necessity of subtracting income taxes from any award of past or future lost wages since the jury is instructed that its award will not be taxed. Accordingly, the trial court did not err in giving Mock's requested charge and in refusing to give Central's requested charge.

9. The trial court did not err in refusing to grant Central's motion for directed verdict on Mock's FELA claim. Contrary to Central's assertion, the evidence did not show that Mock's own negligence was the sole cause of his injuries. As previously stated, in a FELA case, a directed verdict is possible only when there is a complete absence of probative facts supporting the nonmovant's position. *Bagley*, supra. Thus, the question before us is whether there was a complete absence of probative facts supporting Mock's FELA claim against Central.

A review of the record reveals some evidence that Central violated the drainage regulation. There is further evidence that the EOT was awkward and hard to control, that Mock had to use one hand to balance the EOT while

grabbing the air hose with his free hand, and that Mock and other conductors received no training regarding the removal of EOT devices. This evidence is sufficient to enable a rational trier of fact to determine that Central failed to provide a safe working environment for Mock.

Furthermore, we do not find that Mock's testimony should be construed against him. While Mock did not mention the presence of mud when first questioned by the claims agent, Mock explained that he was under medication at the time and that his focus was on his injury, rather than the conditions under which he was working at the time of the injury. It is further undisputed that Mock was never directly asked about the conditions surrounding the incident or mud until his pre-trial deposition, when he was asked where he was standing at the time of the incident. Thus, this case is not controlled by *Shiver v. Norfolk-Southern Ry. Co.*, 225 Ga.App. 544, 545(1), 484 S.E.2d 503 (1997), where the plaintiff made an extensive statement which was totally contradicted by his later testimony. The trial court correctly denied Central's motion for directed verdict on this issue.

10. Central next asserts the trial court erred in refusing to grant a directed verdict on Mock's claim for future lost wages. Central claims Mock failed to sustain his burden of proving future damages with reasonable certainty. We disagree.

Evidence presented showed that Mock suffered a 40 percent physical impairment of his shoulder, which translated into a 24 percent physical impairment of his whole person. Mock is permanently restricted from hanging from a moving train, pushing or pulling more than 30 pounds, and lifting more than 35 pounds. He has persistent pain and is disqualified from his conductor's work. Because of this, he lost 16.5 years of seniority and is now subject to any possible layoffs. While Mock is currently employed as an engineer with Central and is making more money than he did as a conductor, Mock testified that

this job sometimes causes his left arm to hurt and he has to complete tasks using only his right arm. He further testified that he loses $600 to $700 in wages per month because he needs to rest his shoulder from all the activity. In addition, an economist testified as to Mock's lost future income based on his 24 percent impairment. This evidence was sufficient to permit the jury to determine, by a reasonable certainty, Mock's future lost wages. See *Seaboard Coastline R. Co. v. Delahunt*, 179 Ga.App. 647, 651(12), 347 S.E.2d 627 (1986).

11. In its final enumeration of error, Central contends the trial court erred in granting its motion for new trial based on the excessiveness of the jury's verdict. We disagree.

A detailed examination of the evidence bearing on damages in this case does not demand a finding that the jury's $755,000 general damage award was "so excessive as to shock the judicial conscience and raise an irresistible inference that passion, prejudice or another improper cause invaded the trial." (Citations and punctuation omitted.) *Norfolk Southern R. Co. v. Jones*, 219 Ga.App. 602, 608(4), 466 S.E.2d 260 (1995). "Before the verdict will be set aside on the ground that it is excessive, where there is no direct proof of prejudice or bias, the amount thereof, when considered in connection with all the facts, must shock the moral sense, appear exorbitant, flagrantly outrageous, and extravagant. It must be monstrous indeed and such as all mankind must be ready to exclaim against at first blush. It must carry its death warrant upon its face." (Citations and punctuation omitted.) *Id.* at (4)(a), 466 S.E.2d 260.

There was evidence that Mock suffered and is still suffering pain; he had three surgeries related to this incident; his job as an engineer sometimes aggravates his pain and he finds other ways to do his work when his left arm hurts too much; he misses approximately two trips a month because his left arm hurts and he needs to rest it

from all the activities; and playing with his children causes him pain. Mock is permanently restricted from performing certain movements and suffers from a 24 percent permanent physical impairment of his whole person. In addition, Mock lost 16.5 years of seniority because of the injuries sustained. The jury also heard evidence from which it could have calculated Mock's special damages alone to total nearly $323,000. Accordingly, we cannot say that the jury's award of $755,000 is excessive and can be explained logically only as having resulted from an improper cause.

Judgment affirmed.

BIRDSONG, P.J., and SMITH, J., concur.

APPENDIX B

COURT OF APPEALS
OF THE STATE OF GEORGIA
ATLANTA

March 25, 1998

The Court of Appeals hereby passes the following order:

Case. No. A98A0250

CENTRAL OF GEORGIA RAILROAD COMPANY

v.

RONALD MOCK

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

APPENDIX C

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE
ATLANTA

DATE: July 02, 1998

Case No. S98C1132

CENTRAL OF GEORGIA RAILROAD COMPANY

v.

RONALD MOCK

Court of Appeals Case No. A98A0250

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sincerely,

SHERIE M. WELCH,
Clerk

APPENDIX D

SUPREME COURT OF GEORGIA

Atlanta, July 31, 1998

Case No. S98C1132

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

CENTRAL OF GEORGIA RAILROAD COMPANY

v.

RONALD MOCK

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Fletcher, P.J., and Hunstein, J., who dissent.

APPENDIX E

STATE COURT OF BIBB COUNTY
STATE OF GEORGIA

Case No. 39217

RONALD MOCK

VS.

NORFOLK SOUTHERN RAILWAY COMPANY,
A CORPORATION, f/k/a, a/k/a
SOUTHERN RAILWAY COMPANY;
CENTRAL OF GEORGIA RAILROAD COMPANY

JUDGMENT

This action came on for trial before the Court and a jury, Honorable J. Taylor Phillips, presiding, and the issues having been tried and the jury having rendered its verdict;

IT IS ORDERED AND ADJUDGED that the plaintiff, Ronald Mock recover of the defendant, Norfolk Southern Railway Company, a Corporation, f/k/a, a/k/a Southern Railway Company; Central of Georgia Railroad Company the sum of $755,000.00 with interest thereon at the legal rate as provided by law, and costs of action.

Dated at Macon, Bibb County, Georgia, this 2nd day of April, 1997.

/s/ J. Taylor Phillips
Judge,
State Court of Bibb County

/s/ [Illegible]
Plaintiff's Attorney
124450 bar #

Filed in Office, this 2nd day of April, 1997.

/s/ Ann Griffin
Dep. Clerk